Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review --	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

To: The Commission

Reply Comments of Morgan Murphy Media

Morgan Murphy Media, by counsel, submits these Reply Comments in connection with the Notice of Inquiry ("NOI") issued by the Commission in connection with its 2010 Quadrennial Regulatory Review.[1] Morgan Murphy Media joined in the Comments filed in this proceeding by the Coalition of Smaller Market Television Stations,[2] which proposed principles to guide the Commission's review of the local television ownership rule and provided evidence of the financial challenges faced by television stations in smaller markets and the public interest benefits associated with in-market station combinations. Comments filed by the Coalition, the National Association of Broadcasters ("NAB") and others overwhelmingly demonstrate that stations in smaller markets face unique challenges and that the public would benefit from rule changes to facilitate combinations to help promote localism. In the meantime, Morgan Murphy Media urges the Commission to signal its willingness to consider waivers of the rules based on

---

[1] Notice of Inquiry, *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182 (rel. May 25, 2010); *see also* Public Notice, *Media Bureau Announces Comment Deadlines for Notice of Inquiry in Media Ownership Proceeding*, MB Docket No. 09-182 (rel. June 11, 2010)(setting comment due date of July 12, 2010 and reply comment due date of July 26, 2010).
[2] *See* Comments of Smaller Market Television Stations, MB Docket No. 09-182 (filed July 12, 2010) ("Coalition Comments").

the "small market" waiver policy that it adopted in 2003 – not as a substitute for meaningful structural relief in smaller markets but as a means to provide much-needed immediate relief.

Morgan Murphy Media owns and operates TV and radio stations in small- and medium-sized markets in Washington, Wisconsin, Idaho and Iowa.[3] The company has been family owned since its inception more than 100 years ago as a local newspaper company serving areas in Minnesota. Nearly 70 years ago, the company's business grew to include broadcasting under the leadership of the father of Morgan Murphy Media's current President, Elizabeth Murphy Burns, who is the granddaughter of the company's founder.

The company prides itself on its commitment to providing vital local news, election coverage, emergency information and public affairs programming to its communities – a commitment that has not wavered despite the widely acknowledged economic and financial challenges facing the broadcasting industry. The collapse of the nation's economy and increased competition from MVPDs, Internet and new media companies have stressed station revenues in recent years. Available advertising dollars have become increasingly scarce. Economic pressures have sharply limited access to capital, and TV broadcasters have encountered significant strains on their budgets in the wake of the expense associated with the digital transition. These economic pressures have been exacerbated by Commission policies that have unduly limited or prevented station combinations in smaller markets and by the failure of the Commission to apply the "small market" waiver standards it wisely adopted in 2003.

[3] Morgan Murphy Media includes: Television Wisconsin, Inc. (WISC-TV, Madison, WI), QueenB Radio Wisconsin, Inc. (WPVL[AM] & WPVL-FM, Platteville, WI; WGLR[AM] & WGLR-FM, Lancaster, WI; KIYX-FM, Sageville, IA), Spokane Television, Inc. (KXLY-TV, Spokane, WA); QueenB Radio, Inc. (KZZU-FM, Spokane, WA; KEZE-FM, Spokane, WA, KXLY[AM] & KXLY-FM, Spokane WA; KHTQ [FM], Hayden, ID; KVNI [AM], Coeur d'Alene, ID; KXLX[AM], Airway Heights, WA), Apple Valley Broadcasting, Inc. (KAPP[TV], Yakima, WA, KVEW[TV], Kennewick, WA), and QueenB Television, LLC (WKBT[TV], La Crosse, WI).

Morgan Murphy Media agrees with the Coalition and the NAB that relaxation of ownership restrictions by the Commission would promote localism and would enhance the long-term viability of local broadcast service.[4] Retention of the eight voices/top four duopoly rule in small to medium-sized markets is contrary to the public interest. Permitting station combinations in small to medium-sized markets would help sustain the economic viability of local broadcasting and would help ensure the continuation of free over-the-air broadcasting in the public interest. As the Commission and the NAB have noted,[5] "small market stations are competing for disproportionately smaller revenues than stations in large markets." In light of the financial, technological and competitive challenges facing broadcasters, localism must be preserved and promoted via Commission policies that maintain broadcasting as an economically viable service, particularly in those smaller markets where station revenues face the greatest pressure.

In particular, the Commission's top four/eight voices duopoly rule, and the Commission's unwillingness to apply the "small market" waiver of that rule that it adopted seven years ago, undermines the ability of stations to serve their communities. Commission rules provide that an entity may own two television stations in the same Designated Market Area ("DMA") if (1) the Grade B contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, *and* at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the combination.[6] Waivers of the

---

[4] *See* Coalition Comments; *see also* Comments of the National Association of Broadcasters, MB Docket No. 09-182 (filed July 12, 2010) at 43 ("NAB Comments").
[5] *See 2002 Biennial Regulatory Review,* Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13698; see also NAB Comments at 80.
[6] 47 C.F.R. §73.3555(b).

top four/eight voices rule are available to "failed," "failing" or "unbuilt" stations but not specifically for stations in smaller markets. Under the rules,

- a "failed" station is defined as one that "has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application."
- a "failing" station is defined as one that "has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the filing of the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity."
- permittees of "unbuilt" stations can qualify for a waiver "if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so."[7]

These waivers, however, fall short by providing relief to only the most desperate stations. The rules have driven some stations that are not viable but not yet "failed" or "failing" in smaller markets to enter into non-attributable shared services agreements and/or joint sales arrangements as an alternative to declaring bankruptcy or ceasing operations altogether, given the apparent unavailability of the "small market" waiver.

The top four/eight voices rule was first adopted in 1999, when the Commission revised its local television ownership rule to implement Congressional mandates.[8] In the Commission's 2002 Biennial Review Order, the Commission recognized benefits from some consolidation in larger markets and adopted a rule permitting common ownership of (1) two commercial television stations in markets with 17 or fewer full-power stations and (2) three such stations in all other markets with five or more stations, while also retaining the top-four restriction, eliminating the eight voices test.[9] The 2002 Biennial Review Order also modified the

---

[7] *Id.* at Note 7.

[8] *See Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd. 12,903 (1999) ("1999 Order").

[9] *See* 2002 Biennial Review Order at ¶¶134, 186-188. The Commission also sought to eliminate the provision permitting same-market combinations where there would be no Grade B contour overlap.

Commission's criteria for waiver of the local television ownership rule to provide some relief in smaller markets. The "small market" waiver standard as adopted provided that in markets with 11 or fewer stations, parties could seek a waiver of the top-four-ranked restriction by making certain showings.[10]

In 2004, the 3rd Circuit Court of Appeals stayed the 2002 Biennial Review Order and, in the *Prometheus* decision thereafter affirmed in part and remanded in part.[11] The 3rd Circuit upheld the FCC's decision to retain the top-four restriction but remanded the specific numerical limits for the Commission's further consideration.[12] Most importantly, the Court viewed favorably the availability of a waiver of the top-four restriction in smaller markets in finding that the FCC justified its numerical limits.[13] Despite the court's endorsement of the waiver as a critical legal underpinning of the top four/eight voices portion of the rule, no "small market" waivers appear to have been entertained by the Commission.

In the FCC's 2008 Report and Order and Order on Reconsideration, on remand from *Prometheus*, the Commission mostly reverted to the pre-2003 version of its TV ownership rule and retained the top-four prohibition.[14] The Commission also retained the waiver standard for failed, failing or unbuilt stations but decided to "reinstate our requirement that a waiver applicant demonstrate that there is no buyer outside the market willing to purchase the station at a reasonable price."[15] The Commission made little mention of the "small market" waiver or

[10] For example, the Commission stated that it would consider whether 1) the applicant could demonstrate that a merger would reduce a competitive disparity between the merging stations and a dominant station, 2) the effect of the proposed merger on the DTV transition, 3) the effect on localism and viewpoint diversity, such as to preserve a local newscast, 4) the proposed combination involved a UHF station, which generally has a reduced audience reach, or 5) where stations do not have overlapping Grade B contours or have not been carried via DBS or cable to any of the same geographic areas within the past year. *See* 2002 Biennial Review Order at ¶¶228-231.
[11] *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d. Cir. 2004).
[12] *Id.* at 416-420.
[13] *Id.* at 416-417.
[14] *See 2006 Quadrennial Regulatory Review*, 23 FCC Rcd 2010 ("2008 Order").
[15] *Id.* at 2063-2064.

whether broadcasters could still avail themselves of relief from the top-four restriction based on the criteria adopted in 2003.[16] It is noteworthy, however, that the same top-four prohibition existed in the 1999, 2002 and 2008 versions of the rule and that in the 3rd Circuit's decision in 2004, the availability of a waiver was given as a partial justification for upholding the top-four prohibition that remains in the rules today.

Morgan Murphy Media requests that the Commission immediately signal its willingness to consider "small market" waivers consistent with the criteria adopted in 2003. With respect to the rulemaking phase of this proceeding, however, the Commission should, as the Act requires, undertake a full reform of its duopoly rule to reflect contemporary conditions in the advertising and viewing/media marketplace while also preserving and expanding these waiver policies. Simply put, in many small to medium-sized markets, the record in this proceeding and in others demonstrates that these restrictions are not only unnecessary, but they hinder the ability of many stations to provide local service. The record demonstrates an overwhelming need for immediate relief.[17]

Morgan Murphy Media emphasizes, however, that even the wisest waiver policy cannot be a substitute to a long-term structural solution for media ownership; rather, the Commission's

---

[16] In fact, with respect to the small market waiver, in the 2008 Order, the FCC decided on reconsideration that it would eliminate from its waiver criteria any consideration of whether a merger was needed to facilitate the digital transition (which was one of the showings identified in the 2002 Biennial Review Order for the small market waiver). *Id.* at 2069. The 2008 Order did not otherwise reference an explicit repeal of the small market waiver criteria set forth in the 2002 Biennial Review Order – instead the Commission stated that given that "we are adopting the rule as it existed prior to the *2002 Biennial Review Order*, our waiver standard will not include this [DTV Transition] consideration." *Id.*

[17] *See, e.g.,* Comments of Gray Television, Inc. at pp. 11-12 (stating that "[i]n its current form, the Commission's duopoly rule disadvantages stations in medium and smaller markets that are struggling to complete – or in some cases even to remain economically viable. The lower rated or weaker stations in such markets are deprived of cost-savings and financial and operational support that might be available from a stronger competitor."); Comments of KTBS, Inc. (questioning "whether conditions existing today warrant as stringent a limitation" as the current local television ownership rule); NAB Comments at 43-44 (stating that "market and economic forces are hindering the ability of broadcasters to earn revenue needed to support high quality content desired by local viewers and listeners"); Coalition Comments at 2 (noting that relaxation of the duopoly rule is "warranted in smaller markets to help broadcasters to compete" with other media outlets and to achieve economies of scale to result in more responsive and diverse programming.").

waiver policy should provide an immediate, near-term solution for broadcasters in smaller markets until such time as the Commission relaxes its structural rules to permit more in-market TV station combinations. The waiver policy should not be a permanent substitute for rule changes because waivers by their nature are case-by-case adjudications of specific sets of facts, and ultimately waiver relief is expensive, time consuming and uncertain for broadcasters, as well as a drain on the Commission's scarce resources. While the FCC considers the changes to its rule so desperately needed in small markets, however, immediate implementation of the "small market" waiver policy adopted in 2003 can provide near-term relief, in particular for financially distressed broadcasters who fall short of being "failed" or "failing" stations.

Conclusion

For the above-stated reasons, Morgan Murphy Media urges the Commission to promote localism by providing immediate relief in smaller markets through application of the small market waiver standard it previously adopted and ultimately to adopt new rules that provide meaningful structural relief without the need to resort to an uncertain and costly waiver process.

Respectfully submitted,

Morgan Murphy Media

By: /s/ Robert J. Rini

Robert J. Rini
Jonathan E. Allen
Rini Coran, PC
1140 19th Street, NW Suite 600
Washington, DC 20036
202-296-2007
Counsel to Morgan Murphy Media

July 26, 2010